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No. 87-1031

In The

Supreme Court of the United States

October Term, 1987

G. P. REED,

Petitioner,

v.

UNITED TRANSPORTATION UNION, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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COUNTERSTATEMENT OF QUESTION PRESENTED

Should this Court grant certiorari to review the decision of the Court of Appeals that applied the six-month limitations period from *DelCostello v. Teamsters,* covering actions for breach of a union's duty of fair representation, to a Labor Management Reporting and Disclosure Act (LMRDA) Bill of Rights claim where undisputed facts indicate potential effects of internal union strife upon the stability of collective bargaining?

PARTIES

The parties to this proceeding are: G. P. Reed; the United Transportation Union, its International President Fred A. Hardin, one of its Vice Presidents Kenneth R. Moore, and one of its International Auditors J. L. McKinney (all named in their official capacities).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

No. 87-1031

—o—

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—o—

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The Respondents, United Transportation Union, its International President Fred A. Hardin, one of its International Vice Presidents K. R. Moore, and one of its International Auditors J. L. McKinney, respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the decision and judgment of the United States Court of Appeals for the Fourth Circuit rendered September 17, 1987, reported at 828 F.2d 1066, reversing on

interlocutory appeal the decision and judgment of the United States District Court for the Western District of North Carolina rendered May 1, 1986, reported at 633 F.Supp. 1516.

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COUNTERSTATEMENT OF CASE

Proceedings Below:

Petitioner G. P. Reed, a member in good standing of the Respondent United Transportation Union (hereinafter, "UTU") and a Secretary-Treasurer of its Local 1715, filed this action on or about August 2, 1985, primarily seeking relief under Section 101 of the Labor-Management Reporting and Disclosure Act (hereinafter, "LMRDA") (29 U.S.C. 411) for violation of his "Bill of Rights" in the UTU's requirement, after audit, that he repay approximately $1,200.00 to the Local that he had previously reimbursed himself. The complaint also contained pendent state law claims sounding in quantum meruit and allegations concerning breach of the fiduciary obligations by UTU officers with respect to their duties under Title V of LMRDA.

After UTU (and its officers specifically named in the complaint, to wit, its President, F. A. Hardin, one of its Vice Presidents, K. R. Moore, and one of its International Auditors, J. L. McKinney), moved for summary judgment on the grounds, *inter alia,* that Reed had filed his action outside the applicable six-month statute of limitations contained in Section 10(b) of the National Labor Relations Act (hereinafter, "NLRA") (49 U.S.C. 160(b)), the parties submitted affidavits in support of their respective positions as well as legal memoranda.

After hearing oral argument on January 31, 1986, the district court on April 30, 1986, (filed May 1, 1986) entered its order wherein it determined that the claims under LMRDA "Bill of Rights" and the pendent state law claims related thereto were not subject to the six-month statute of limitations contained in 29 U.S.C. 160(b). (Pet. App. at 1a-45a).[1] The Court further found that Reed had not sufficiently complied with Title V of LMRDA to raise any issue with respect to the fiduciary obligation of UTU or its officers. (*Id.*) The district court in its order noted the importance of the limitations question and that it was a matter of first impression within the Circuit opening the possibility for certification to the Fourth Circuit under 28 U.S.C. 1292. (*Id.*) After petition to the Fourth Circuit pursuant to such statute, the petition of UTU and its officers was granted. (Pet. App. at 48a-49a). Reed did not seek interlocutory review of the holding of the district court with respect to dismissal of his claim under Title V of LMRDA. After briefing and argument the Fourth Circuit reversed, holding the six-month limitations period in 29 U.S.C. 160(b) applicable to Petitioner's claims. (Pet. App. at 48a-70a).

Background of the Dispute:

The facts as found by the district court related to this matter for present purposes are correct and are essentially uncontested. As the district court found, in August 1982, Fred A. Hardin, President of UTU, sent J. L. McKinney, one of UTU's International Auditors, to audit the books and records of Local 1715, where Reed served as Secretary-Treasurer. The audit was prompted by a letter to Presi-

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[1] References to the Appendix to the Petition appear as "Pet. App."

dent Hardin from a member of Local 1715 regarding concerns about financial stability and the future of the Local. After the audit, McKinney disallowed checks paid by the Local to Reed for "time lost" in the sum of $1,210.20. (App. at 20-21).[2]

Reed appealed McKinney's findings to President Hardin by letter dated September 6, 1982, claiming that repayment of the sum found was demanded on the basis that he get prior approval for reimbursement for "time lost." Reed claimed that no such prior approval requirement had existed or been enforced before its application and enforcement against him. (App. at 21).

President Hardin denied Reed's appeal by letter dated October 1, 1982, explaining that when a local officer is salaried, his regular salary is meant to cover the responsibilities of his office, further noting that the sum was disallowed because the claims had been for performance of ordinary duties and responsibilities. Reed thereafter sought to enforce the "prior approval" policy against other officials of Local 1715. Plaintiff's attempts were rejected by President Hardin. On June 28, 1983, Reed met with UTU Vice President K. R. Moore to determine, in his view, whether UTU planned to continue to enforce dual policies with respect to reimbursement of expense payments. Reed claims that Vice President Moore refused to discuss the matter with him. (App. at 21).

Reed's counsel wrote to President Hardin on July 1, 1983, seeking repayment of the $1,210.20 on the grounds

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[2] References to the Appendix in the Court of Appeals appear as "App."

that different standards were applied to Reed than to other union members, asserting that there was a conflict between Fred Warlick, President of Local 1715, and Reed, and that a violation of 29 U.S.C. 411 existed. President Hardin responded to Reed's counsel on July 22, 1983, stating that the issue of the time disallowed to Reed as a result of the audit was closed. Reed's counsel responded again by letter of August 2, 1983, in which he again requested reimbursement, and also informed President Hardin that he was going to advise Reed "to commence litigation on or about September 15, 1983, unless the union has properly reviewed and reconciled this matter." (App. at 22).

Reed is a long time officer at the local level within the organization. The friction between the two officers (Reed and Warlick) does go to the bargaining relationship with the employers. Reed claims that Warlick has accused him of being a "company man" and that Warlick has stated all company people are "bastards" (App. at 33). Warlick denies that allegation (App. at 44), but it is obvious that the two have some dispute with respect to how the employer in this case is to be approached in bargaining situations. Thus, the facts of this case indicate that this dispute, although internal, has external ramifications by Reed's own admission.

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REASONS WHY THE PETITION SHOULD BE DENIED

Although it is apparent that to date five circuits have held that a "bill of rights" claim under Section 101 of the

Labor Management Reporting and Disclosure Act (29 U.S.C. 411) is subject to the six-month limitations period enunciated by this Court in *DelCostello v. Teamsters*, 462 U.S. 151 (1983) (*See, Lewis v. Teamsters*, 826 F.2d 1310 (3d Cir. 1987); *Steelworkers Local 1397 v. United Steelworkers of America*, 748 F.2d 1980 (3rd Cir. 1984); *Reed v. United Transportation Union*, 828 F.2d 1066 (4th Cir. 1987), *cert. pending*, No. 87-1031; *Adkins v. Int'l Bros. of Electrical Workers*, 769 F.2d 330 (6th Cir. 1985); *Vallone v. Teamsters*, 755 F.2d 520 (7th Cir. 1984); *Clift v. United Auto Workers*, 818 F.2d 623 (7th Cir. 1987), *cert. pending*, No. 87-42; *Davis v. United Auto Workers*, 765 F.2d 1510 (11th Cir. 1985), *cert. denied*, — U.S. —, 106 S.Ct. 1284 (1986)), and two circuits have refused to apply the *DelCostello* limitations period, choosing to apply the most relevant state statute of limitations in accordance with the decision of this Court in *United Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966) (*Rodonich v. House Wreckers Local 95*, 817 F.2d 967 (2d Cir. 1987); *Doty v. Sewall*, 784 F.2d 1 (1st Cir. 1986)), it is equally apparent that this case does not present the best facts upon which to resolve such apparent conflict. This case involves an internal audit prompted by a member's request resulting in a $1,200.00 finding against the petitioner in this case. It does not involve rights to membership or elective office. Moreover, there is evidence of record that the internal friction between the petitioner and another union officer has some potential effect on the stability of the collective bargaining relationship with the employer, not as apparent in the cases which have applied the relevant state statute of limitations.

Of all the factors discussed in *DelCostello v. Teamsters*, *supra*, the stability of the collective bargaining rela-

tionship appears key, prompting the Second Circuit to hold the *DelCostello* six-month limitations period applicable to an action for breach of a carrier's duties under the Railway Labor Act (45 U.S.C. 151 *et seq.*) (*see, Robinson v. Pan American World Airways*, 777 F.2d 84 (2d Cir. 1985)), in line with the similar holding of the Seventh Circuit in *Brotherhood of Locomotive Engineers v. Atchison, Topeka & Santa Fe Ry.*, 768 F.2d 914, 919 (7th Cir. 1985). It should also be noted that the First Circuit prior to this holding in *Doty v. Sewall, supra*, had held that the six-month limitations period from *DelCostello* was applicable to a claim under 29 U.S.C. 414 (dealing with the duty of labor organizations to provide access to collective bargaining agreements to members). *Linder v. Berge*, 739 F.2d 686 (1st Cir. 1984). To put it simply, whereas *Doty, supra*, and *Rodonich, supra*, apparently involve internal rights to membership or electrive strife, this case presents a claim (and at this point that is all it is) that normal internal accounting procedures were unfairly applied to a claimed political opponent. The analogy of LMRDA "bill of rights" claims to civil rights claims noted by the *Doty* court (although criticized by other courts, *see, McConnell v. Teamsters*, 606 F.Supp. 460 (S.D.N.Y. 1985)) just simply is not present in this case.

Finally, it is unfair for petitioner to argue that the decision below contained no substantial analysis, when it in fact relied upon the decision of the Third Circuit in *Steelworkers Local 1397 v. United Steelworkers of America, supra*, which, as petitioner notes, has provided the conceptual underpinning for the line of decisions applying the six-month limitations period from *DelCostello*. (Pet. at 8).[3]

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[3] References to the Petition appear as "Pet."

Moreover, the Court below itself discussed the effect that a case such as the one at bar can have on the stability of collective bargaining relationships. 828 F.2d at 1069-70. There are perhaps cases which exist which would appropriately present this issue for resolution of the conflict existing in the circuits, but this case is not such a vehicle.

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CONCLUSION

For all the foregoing reasons, Respondents United Transportation Union, Fred A. Hardin, K. R. Moore and J. L. McKinney respectfuly request that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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